

Opinion of Timothy O'Hanlon, PhD of Alexander Haddock Case
Michigan's Adoption Assistance Program and Freedom of Information Documents

Recent information secured by Cheryl Haddock through the Freedom of Information Act clearly confirms that the Michigan's Family Independence Agency continued to invoke state adoption assistance laws and policies as grounds for denying Alexander Haddock's application for adoption assistance that the agency knew were out of compliance with federal policy and federal Title IV-E State plan requirements. The Haddock's consistently argued that Michigan's laws and the FIA's policies were in conflict with both federal law and Michigan's IV-E State Plan requirements. Even though they cited provisions singled out by federal officials as noncompliant, the FIA continued to cite the flawed provision throughout the various stages of Haddock's appeal. At the same time, the agency quietly acknowledged that certain of its adoption assistance policies were out of compliance, including those invoked to deny the Haddock's request for adoption assistance. During the entire course of the family's appeal, FIA representatives carried on a dialogue with federal officials concerning the actions it was taking to bring state laws and policies into compliance.

Michigan's FIA:

1. Withheld information about its compliance problems throughout the various stages of the Haddock's appeal process.
2. Cited policies as grounds for denying Alexander Haddock's eligibility for adoption assistance that it knew were out of compliance with federal law. FIA denied arguments presented by the Haddocks that the agency knew to be correct.
3. By acting in bad faith, the FIA violated the Haddock's due process rights which ironically are also federal adoption assistance requirements and mandatory components of Michigan's IV-E State Plan.
4. By acting in bad faith, caused the Haddocks to exhaust their financial resources. The FIA caused the Haddock's to prepare arguments and provide documentation in rebuttal to policy assertions the agency knew to be incorrect.
5. The entire hearing and appeals process was tainted by the duplicitous, dishonest behavior of the Michigan FIA. The FIA's conduct resulted in a grave injustice to a special needs child with fetal alcohol syndrome and other serious developmental disorders.

Specifically:

- A. Officials of Michigan's Family Independence Agency (FIA) were aware that portions of state's adoption assistance laws and policies were out of compliance with federal adoption assistance policy two weeks prior to the Haddock family's initial administrative hearing to determine their son Alexander's eligibility for adoption assistance.
- B. In a letter dated June 3, 2003, Joyce A. Thomas, Regional Administrator of the Administration for Children and Families at the U.S. Department of Health and Human Services, informed Nannette Bowler, Director of Michigan's Family Independence Agency (FIA) that portions of its Title IV-E Adoption Assistance laws were out of compliance with federal law.

C. The June 3, letter stated:

"It is our understanding that current Michigan policy and legislation continues to require a stay in foster care as prerequisite for adoption assistance eligibility for all children, including those described in the previous paragraph. State legislation effective on December 23, 2002 (Senate Bill 1605) removed the requirement of a four month stay in foster care but continues to require that the adoptee be in foster care at the time the department (FIA) certifies the support subsidy. Current Michigan policy (CFS 750 dated 8-1-2002) delineates that the child must have been in foster care for at least four months immediately prior to the certification request as an eligibility requirement for adoption assistance. We are aware that Michigan policy is being revised to reflect the December legislative change."

The June 3, letter also reminded FIA that

"to remain eligible to receive Federal financial participation (FFP) in the costs of adoption assistance, a State must have a State plan approved by the Secretary that meets the requirements of 45 CFR 1355, 1356 and section 471(a) of the Social Security Act. Therefore, in accordance with these requirements, we are requiring that the State amend the State Plan to be in conformity with these requirements, we are requiring that the State amend the State Plan in conformity with Federal regulations, specifically, section 4. Adoption Assistance Payments."

- D. Alexander Haddock's appeal for Title IV-E adoption assistance was pending at the time. The Haddocks requested an administrative hearing to determine Alexander's eligibility in a letter of June 7, 2002. In response dated September 11, 2002 Bonnie Watkins of the Michigan FIA responded to the Haddock's request for an administrative hearing by informing them, that the policy singled out by

federal officials as out of compliance could pose an obstacle to their son's eligibility. She wrote, *"We do want to make you aware that that our eligibility criteria include a requirement that a child be in Michigan foster care for at least four months prior to adoption."* This was one of the non-compliant provisions later cited by federal officials. It was still being cited by FIA a year after the June 2003 letter from the federal regional office.

- E. While the Michigan FIA acknowledged the problems and worked with federal officials to bring the adoption assistance policies into compliance, the agency continued to cite the flawed policies as grounds for denying Alexander Haddock's eligibility throughout all the stages Haddock's appeal.
- F. The initial administrative hearing on Alexander Haddocks' eligibility for Title IV-E adoption assistance was held on June 17, 2003, two weeks after the federal Regional Administrator pointed out that certain of Michigan's adoption assistance laws and policies were out of compliance. Mr. William Johnson of FIA's Adoption Services Division, who was actively involved in working with federal officials to remedy the state's compliance problems, attended the Haddocks's initial administrative hearing. In spite of the fact that the Haddocks based a large part of their case on the contention that Michigan's adoption assistance policies and IV-E State Plan were out of compliance with federal law and cited the same flawed provisions as the federal officials, the FIA agency never acknowledged its compliance problems and continued aggressively to deny the family's appeal.
- G. Over the course of the next several months following the June 3, 2003 letter from the federal Regional Administrator and Alexander Haddock's June 17 hearing, events proceeded along two separate, bizarre tracks.
 - a. On one track, Mr. Johnson and other FIA officials acknowledged that portions of Michigan's adoption assistance policies were in conflict with federal law and reported to federal officials the steps that were being taken to bring them into compliance.
 - b. At the same, the hearing decision denied Alexander Haddock's appeal for adoption assistance and the state continued to include the discredited policies as grounds for the denial. The Haddock's repeated argument's that Michigan's IV-E State Plan did not meet federal compliance standards and that state adoption assistance policies were in conflict with federal law are vigorously rejected. At the same time the state was ignoring the Haddock's complaints that Michigan's adoption assistance policies were out of compliance, FIA was struggling to fix its compliance problems with representatives from the federal Region V Office of Administration for Children and Families in Chicago.

- H. The Michigan FIA's aggressive denial of the Haddock's claims that the state's adoption assistance policies and IV-E State Plan were non-compliant along with the voluminous documentation submitted in support of those claims ignored the federal Regional Administrator's instructions to the Michigan agency in her June 3, 2003 letter that *"from a practice standpoint, consideration should be given to eligibility decisions that were affected for those children who should have been eligible for benefits under federal regulations."*
- I. The question of the Haddock's appeal arose in one exchange of e-mails between FIA officials and the federal regional office in Chicago. On May 19, 2004, federal official Barbara A. Putyra asked William Johnson of the FIA if he had received complaints from the Haddock family. Johnson replied that the FIA had reviewed the case and denied it. He wrote, 'the child was not eligible for SSI, so I don't believe would have qualified for adoption assistance.' By that time, the Haddock's appeal was before a local court for judicial review. Contrary, to Mr. Johnson's assertion, the Haddock's argument that Alexander was eligible for adoption assistance was not based on SSI eligibility. Mr. Johnson's statement was all the more curious in that he was present throughout the entire initial administrative hearing. Mr. Johnson was either hopelessly uniformed about the adoption assistance program or was blandly unconcerned about the well-being of the Haddocks and their special needs child.
- J. The FIA continued to cite discredited policy provisions as grounds for denying Alexander Haddock's eligibility for adoption assistance, even after the an amendment to the state statutes partially corrected them. The federal Regional Administrator of the Administration for Children and Families reminded the FIA in a letter of December 15, 2004;

"we required that Michigan amend its State Plan to be in conformity with federal regulations, specifically Section 4. Adoption Assistance Payments. We further related that Federal regulations 45 CFR 1355.32(d)(4) delineate the mechanism that has been instituted to address IV-B or title IV-E compliance issues. It authorizes ACF to require the State to enter into a Program Improvement Plan (PIP) that may result in a penalty if the State remains out of compliance with State Plan requirements under scrutiny (in this case 471(a), 473(a)(2) and 473(c)). At that time we understood that that State legislation effective (December 23, 2002) removed the requirement of a four month stay in foster care, but continued to require that the adoptee be in foster care at the time the Family Independence Agency (FIA) certified the support subsidy. Michigan policy on subsidy eligibility requiring a four month stay in foster care that was in effect at the time of the 2002 legislation was enacted has not been revised to reflect that change."

- K. The federal Regional Administrator ordered the FIA to submit a PIP, warned that further non-compliance would subject the state to fiscal penalties and added, *"additionally, we cannot negate the possibility that Michigan could be sued by families who allege that they should have received adoption assistance payments but did not."*
- L. In their appeal, the Haddocks not only identified the same areas of non-compliance as the federal officials, but also pointed out numerous other areas of noncompliance in Michigan's adoption assistance policies and in Section 4 IV-E State plan, "Adoption Assistance Payments. "
- M. FIA's continued reliance on discredited policies as grounds for denying the Haddocks's request for adoption assistance, while actively working with federal officials to bring the state's policies into compliance, provides sufficient justification for a reconsideration of Alexander's eligibility. The case for re-opening the appeal is further warranted by the federal Regional Administrator of the Administration for Children and Families' instructions to the Michigan FIA that *"consideration should be given to eligibility decisions that were affected for those children who should have been eligible for benefits under federal regulations"* and her warning that *"we cannot negate the possibility that Michigan could be sued by families who allege that they should have received adoption assistance payments but did not."*



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
FAMILY INDEPENDENCE AGENCY
LANSING



NANNETTE M. BOWLER
DIRECTOR

August 5, 2003

Ms. Joyce A. Thomas, Regional Administrator
Department of Health and Human Services
Administration for Children and Families, Region V
233 North Michigan Avenue, Suite 400
Chicago, Illinois 60601-5519

Re: Adoption Assistance Eligibility

Dear Ms. Thomas:

Thank you for your letter received June 3, 2003. We appreciate and share your concern regarding the contradiction between federal and state requirements for adoption support subsidy (Social Security Act sec. 473(a)(2) and 473(c), vis a vis MCL 400.115g).

Your letter first directs that we amend our State Plan to conform with federal regulations, specifically Section 4, Adoption Assistance Payments. We have undertaken the policy and political analysis and budgetary review to determine the best possible amendments. Second, your letter asks us to reconsider previous eligibility decisions made under Michigan law, contrary to federal regulations.

Kathryn Fehrman, Deputy Director, Service Delivery, has spoken with Ms. Putyra of your office to establish a time line for the amendments and to ensure progress is made in this regard. Ms. Putyra has already been working with our management on other matters, and I understand the working relationship is a healthy and constructive one. We are grateful for ACF's guidance to maintain a plan which continues to meet federal requirements and policies.

As you correctly stated, Michigan's legislation is contradictory to the federal legislation as well, so our policy changes will have to occur in tandem with statutory change. Please rest assured that we will do everything in our power to ensure that children awaiting adoption do not have to wait a moment longer than necessary. We will keep you informed of our progress.

Please do not hesitate to contact me, or Kathryn Fehrman at 517.335-5213 with any questions or concerns.

Sincerely,

Nannette M. Bowler

c: Barbara Putyra, ACF
Donald Weatherspoon, FIA
Kathryn Fehrman, FIA
Jean Hoffman, FIA
Bill Johnson, FIA
Kate Young, FIA

RECEIVED

AUG 13 2003

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JUN 03 2003

Nannette Bowler, Director
Michigan Family Independence Agency
235 South Grand Avenue
P. O. Box 30037
Lansing, Michigan 48909

Dear Director Bowler:

We want to bring to your attention a contradiction between Federal regulations and Michigan's policy and legislation pertaining to adoption assistance eligibility requirements for children who are eligible for Supplemental Security Income (SSI). According to the Social Security Act - sections 473(a)(2) and 473(c), a child is eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements for title XVI SSI benefits, and prior to the finalization of the adoption is determined by the State to be a child with special needs. There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation.

It is our understanding that current Michigan policy and legislation continues to require a stay in foster care as a prerequisite for adoption assistance eligibility for all children, including those described in the previous paragraph. State legislation effective on December 23, 2002 (Senate Bill 1505) removed the requirement of a four month stay in foster care but continues to require that the adoptee be in foster care at the time the department (FIA) certifies the support subsidy. Current Michigan policy (CFS 750, dated 8-1-2002) delineates that the child must have been in foster care for at least four months immediately prior to the certification request as an eligibility requirement for adoption assistance. We are aware that Michigan policy is being revised to reflect the December legislative change.

To remain eligible to receive Federal financial participation (FFP) in the costs of adoption assistance, a State must have a State plan approved by the Secretary that meets the requirements of 45 CFR 1355, 1356 and section 471(a) of the Social Security Act. Therefore, in accordance with these requirements, we are requiring that the State amend its State Plan to be in conformity with Federal regulations, specifically Section 4. Adoption Assistance Payments.

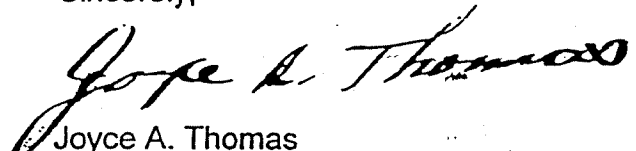
Also, from a practice standpoint, consideration should be given to eligibility decisions that were affected for those children who should have been eligible for benefits under federal regulations.

Federal regulations at 45 CFR 1355.32(d)(4) delineate the mechanism that has been instituted to address title IV-B or title IV-E compliance issues. It authorizes ACF to require the State to enter into a program improvement plan that may result in a penalty if the State remains out of compliance with the State plan requirement under scrutiny (in this case, 471(a)(1)).

All relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are to be shared with ACF to determine whether the plan continues to meet Federal requirements and policies.

Barbara Putyra of my staff is available to work with your staff on this matter. Ms. Putyra can be reached at 312-353-1786 or via email at bputyra@acf.hhs.gov. Also, should Michigan desire technical assistance from one of our National Child Welfare Resource Centers, Ms. Putyra can facilitate this request.

Sincerely,


Joyce A. Thomas
Regional Administrator

cc: Donna Mullins, Deputy Director, Service Delivery Administration
Jean Hoffman, Manager, Child and Family Service Administration
Bill Jackson, Acting Manager, Children and Family Service Administration



Department of Health and Human Services

Administration For Children and Families

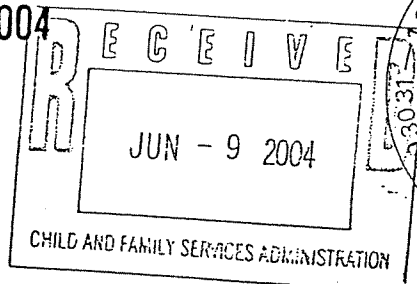
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JUN 02 2004



Marianne Udow, Director
Michigan Family Independence Agency
235 South Grand Avenue
P. O. Box 30037
Lansing, Michigan 48909

Dear Director Udow:

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This is a follow-up to a letter I sent June 30, 2003, regarding a contradiction between Federal regulations and Michigan's policy and legislation pertaining to adoption assistance eligibility requirements for children who are eligible for Supplemental Security Income (SSI). For informational purposes, I am enclosing a copy of this letter as well as your Agency's responses. In essence, while Federal legislation and regulations deem a child eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements for title XVI SSI benefits, and prior to the finalization of the adoption is determined by the State to be a child with special needs, Michigan policy and legislation continue to require a stay in foster care as a prerequisite for adoption assistance eligibility for all children, including those meeting the SSI eligibility requirement.

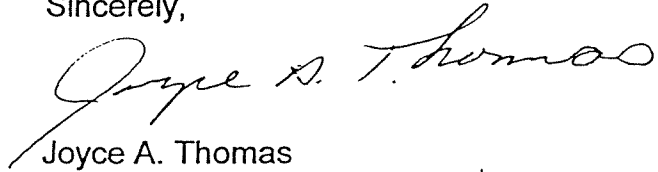
It is our understanding that draft legislation has been developed but has not yet been introduced. Due to the length of time this discrepancy has been in existence, we are requesting that Michigan develop an update to its strategy addressing this discrepancy and tender it to my office within 90 days. We ask that all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, be shared with the Administration for Children and Families (ACF) to determine whether the plan meets Federal requirements and policies. Also, from a practice standpoint, consideration should be given to eligibility decisions that were affected for those children who should have been eligible for benefits under Federal regulations. Provisions at 45 CFR 1355.32(d)(4) authorize ACF to require the State to enter into a program improvement plan relative to title IV-B or title IV-E compliance issues that may result in a penalty if the State remains out of compliance with the State Plan requirement under scrutiny.

We are optimistic that we can resolve this discrepancy expediently and satisfactorily. Barbara Putyra of my staff is available to work with your staff on this matter. Ms. Putyra

Page 2 – Director Udow

can be reached at 312-353-1786 or via email at bputyra@acf.hhs.gov. Also, should Michigan desire technical assistance from one of our National Child Welfare Resource Centers, Ms. Putyra can facilitate this request.

Sincerely,

A handwritten signature in cursive script, reading "Joyce A. Thomas". The signature is written in dark ink and is positioned above the printed name.

Joyce A. Thomas
Regional Administrator

Enclosure

cc: Laura Champagne, Chief Deputy Director,
Longino Gonzales, Acting Deputy Director, Children's Services
William Johnson, Acting Adoptions Manager



Department of Health and Human Services

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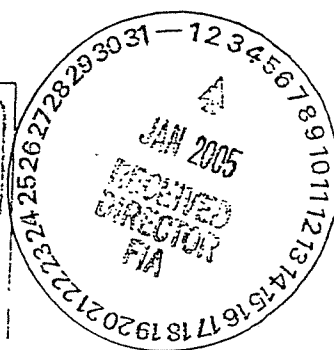
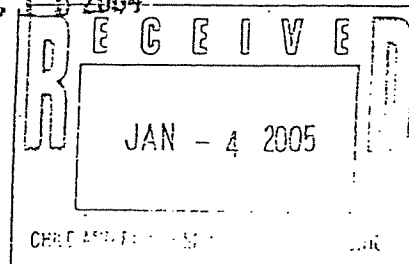
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Marianne Udow, Director
Michigan Family Independence Agency
235 South Grand Avenue
P. O. Box 30037
Lansing, Michigan 48909

DEC 15 2004



Dear Director Udow:

Thank you for your letter of August 5, 2004 in which you expressed your commitment in working with the State legislature and our office to provide that Michigan law allows children who are eligible for Supplemental Security Income (SSI) at the time of adoption to be eligible for title IV-E adoption assistance. While we appreciate your proposal to satisfy the Administration for Children and Family's (ACF) concerns by amending State rules to remove the criteria that a child must be in foster care at the time of adoption in order to be eligible for adoption assistance, we are in need of further specifics concerning the proposal.

In our correspondence to Michigan dated June 3, 2003, we advised that to remain eligible to receive Federal financial participation (FFP) in the costs of adoption assistance, a State must have a State Plan approved by the Secretary that meets the requirements of 45 CFR 1355, 1356 and section 471(a) of the Social Security Act. At that time we required that Michigan amend its State Plan to be in conformity with Federal regulations, specifically Section 4. Adoption Assistance Payments. We further related that Federal regulations at 45 CFR 1355.32(d)(4) delineate the mechanism that has been instituted to address title IV-B or title IV-E compliance issues. It authorizes ACF to require the State to enter into a Program Improvement Plan that may result in a penalty if the State remains out of compliance with the State Plan requirements under scrutiny (in this case, 471(a), 473(a)(2) & 473(c)). At that time we understood that State legislation effective December 23, 2002 removed the requirement of a four month stay in foster care but continued to require that the adoptee be in foster care at the time the Family Independence Agency (FIA) certified the support subsidy. Michigan policy on subsidy eligibility requiring a four month stay in foster care that was in effect at the time the 2002 legislation was enacted has not been revised to reflect that change.

In our June 2, 2004 correspondence we requested an update to Michigan's strategy in addressing the discrepancy. Even though statutory changes bringing Michigan's Social Welfare Act into compliance with the Social Security Act cited in Michigan's response

Page 2 – Marianne Udow, Director

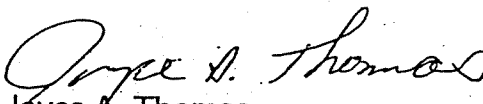
have been proposed and referred to the Senate Committee on Families and Human Services, we are requesting that Michigan develop a formal Program Improvement Plan (PIP) in conjunction with our office that reflects the State's intent to modify its laws and policies to be consistent with the Social Security Act and ACF policy guidance.

This longstanding issue must be resolved as soon as possible. Please submit the PIP within 30 days of receipt of this letter to my office, including specific action steps with timeframes identified to make the necessary modifications. The PIP should include for review by ACF a draft of specific rules and procedures that will be proposed prior to their implementation to determine their consistency with Federal requirements and policies.

ACF will not actively seek retroactive payments, consistent with Federal regulations at 45 CFR 1355.32(d)(4), which allow the State an opportunity for the development and implementation of a PIP. If Michigan remains in non-conformance, the State will be subject to a penalty related to the extent of noncompliance. Additionally, we cannot negate the possibility that Michigan could be sued by families who allege that they should have received adoption assistance payments but did not.

If there are any questions, please have one of your staff contact Barbara Putyra at (312) 353-1786.

Sincerely,


Joyce A. Thomas
Regional Administrator

cc: Longino Gonzales
William Johnson

Department of Health and Human Services

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MAY 13 2005

Marianne Udow, Director
Michigan Department of Human Services
235 South Grand Avenue
Lansing, Michigan 48909



Dear Director Udow:

This is in response to your letter regarding Adoption Assistance relative to children who are eligible for Supplemental Security Income (SSI) at the time the adoption petition is filed and meet the definition of special needs. As cited in your correspondence, we had requested that Michigan develop a Program Improvement Plan to address inconsistencies in State statute and policy with title IV-E of the Social Security Act, specifically Sections 471(a), 473(a)(2) & 473(c). Specifically, Michigan eligibility requirements included a stay in foster care for these children.

A discussion with William Johnson of Michigan's Adoption Program Office on February 3, 2005 revealed that Michigan statute and policy have been revised. Upon review of the revisions, we are in agreement that Michigan statute and policy are now in compliance with the Federal requirements pertaining to adoption assistance eligibility requirements for children who are SSI eligible and meet the definition of special needs. Therefore, we concur that a Program Improvement Plan to address this issue is no longer required.

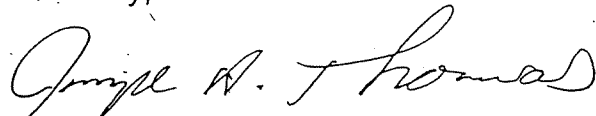
During the course of the discussion a question emerged concerning Michigan's policy on independent adoptions and how it applied to and was implemented in regard to children who are SSI eligible. If a child is SSI eligible at the time the adoption petition is filed and is determined to be a child with special needs, the State may not apply any further requirements or restrictions to the child's eligibility for title IV-E adoption assistance. Michigan policy indicates that independent adoption/direct placement adoptions are ineligible for an adoption support subsidy. We agreed that Mr. Johnson would further research the policy and its implementation in practice to determine if it is affecting eligibility for this population and, if so, work to resolve the matter. We would like to learn the results of Michigan's follow-up in this matter no later than June 30th.

Hanley - due 6/24/05, Sorbet

age 2 – Director Udow

We understand that Kate Hanley is now the Adoptions Manager for Michigan as Mr. Johnson has assumed the responsibilities of Superintendent of the Michigan Children's Institute. Should Ms. Hanley or any of your staff have questions or need assistance please have them contact Barbara Putyra at 312-353-1786.

Sincerely,

A handwritten signature in cursive script that reads "Joyce A. Thomas".

Joyce A. Thomas
Regional Administrator

cc: Laura Champagne
William Johnson
Kate Hanley